

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

228J0288

SENATE ENGROSSED NO. **SB 211** - 02/06/2004

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Senators LaPointe, Abdallah, Brown, de Hueck, Dempster, Dennert, Greenfield, Jaspers, Kelly, Kloucek, Koetzle, Moore, Nachtigal, Olson (Ed), Reedy, Schoenbeck, Sutton (Dan), and Symens and Representatives Van Norman, Burg, Gillespie, McCoy, Thompson, and Valandra

1 FOR AN ACT ENTITLED, An Act to establish a commission to study compliance with the
2 federal Indian Child Welfare Act, to afford due regard to the Act, and to declare an
3 emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. There is hereby established the Governor's Commission on the Indian Child
6 Welfare Act. The commission shall study the requirements of the federal Indian Child Welfare
7 Act, (25 U.S.C. §§ 1901-1963), as amended to January 1, 2004, including compliance with the
8 requirements for notice, placement, expert witness testimony, intervention, transfer of
9 jurisdiction, and active efforts, and the means by which Indian tribes can assist in pursuing the
10 policies of the Act.

11 Section 2. The Governor shall appoint an independent reviewer to complete an analysis of
12 compliance with the Act by the Department of Social Services, the states attorneys, the Unified
13 Judicial System, and private agencies involved in foster care and adoption, and the means by
14 which Indian tribes can assist the state and private agencies in achieving compliance. Upon



1 completion, the independent reviewer shall submit the analysis of compliance to the
2 commission.

3 Section 3. The commission may not exceed twenty-nine members. The Governor shall
4 appoint up to eighteen members including a representative of each of the nine Indian tribes of
5 South Dakota upon the written recommendation of the tribal chairman or the appointed
6 representative of the tribal chairman, a representative from a court appointed special advocates
7 program, two representatives of private child placement agencies, four representatives from the
8 Department of Social Services, and two representatives from the Department of Corrections, one
9 of whom is a member of the Council of Juvenile Services. The President of the Senate shall
10 appoint two members, including one from each political party. The Speaker of the House shall
11 appoint two members, including one from each political party. The Chief Justice of the Supreme
12 Court of South Dakota shall appoint five members. The South Dakota State's Attorney
13 Association shall appoint two members.

14 Section 4. The commission is administered by the Office of the Governor. The commission
15 shall hold not less than four meetings and shall dissolve and cease to exist on December 31,
16 2004. The study by the commission shall include the following areas:

- 17 (1) Review the analysis of compliance completed by the independent reviewer and based
18 upon the results, identify and prioritize any issues or barriers preventing or hindering
19 compliance;
- 20 (2) Review the efforts of the Department of Social Services to enter into agreements with
21 Indian tribes regarding licensing of foster homes, access to federal funding, and
22 contracting of child protection services;
- 23 (3) Explore and evaluate options to address and resolve identified issues and barriers
24 preventing or hindering compliance; and

(4) Make recommendations to improve compliance with the federal Indian Child Welfare Act, (25 U.S.C. §§ 1901-1963), as amended to January 1, 2004, and identify additional resources needed to implement the recommendations.

Section 5. The commission shall provide a final report to the Eightieth Session of the Legislative Assembly which shall include the findings of the commission and any recommendations to improve compliance with the federal Indian Child Welfare Act, (25 U.S.C. §§ 1901-1963), as amended to January 1, 2004.

Section 6. Notwithstanding §§26-7A-28, 26-7A-37 and 26-8A-13, the records and files of the Department of Social Services and its licensees, and the records of court proceedings pursuant to chapter 26-7A and chapter 26-8A involving an apparent, alleged or adjudicated abused or neglected child, including transcripts contained in such records, are open to inspection by the independent reviewer to complete the analysis of compliance described in section 2 of this Act. Any information received by the independent reviewer and its agents or employees which identifies a parent, guardian, custodian, or child shall be held confidential as required by § 26-8A-13.

Section 7. That § 25-5A-35 be amended to read as follows:

25-5A-35. Sixty days after the emergency medical services provider or licensed child placement agency takes possession of the child a hearing shall be held in circuit court to terminate parental rights. ~~Due regard in the administration of §§ 25-5A-27 to 25-5A-35, inclusive, shall be afforded to the Indian Child Welfare Act (25 U.S.C. Secs. 1901-1963) if that act is applicable.~~

Section 8. That chapter 25-5A be amended by adding thereto a NEW SECTION to read as follows:

Due regard shall be afforded to the Indian Child Welfare Act (25 U.S.C. §§ 1901-1963), as

1 amended to January 1, 2004, if that Act is applicable.

2 Section 9. That chapter 25-6 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 Due regard shall be afforded to the Indian Child Welfare Act (25 U.S.C. §§ 1901-1963), as
5 amended to January 1, 2004, if that Act is applicable.

6 Section 10. That chapter 26-8A be amended by adding thereto a NEW SECTION to read
7 as follows:

8 Due regard shall be afforded to the Indian Child Welfare Act (25 U.S.C. §§ 1901-1963), as
9 amended to January 1, 2004, if that Act is applicable.

10 Section 11. Whereas, this Act is necessary for the immediate preservation of the public
11 peace, health, or safety, an emergency is hereby declared to exist, and this Act shall be in full
12 force and effect from and after its passage and approval.